

IN RE: PETITION FOR ZONING VARIANCE
NE/S Upperlanding Road, 715'
NW of Mace Avenue
(344 Upperlanding Road)
15th Election District
5th Councilmanic District
Tempest Realty, Inc.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 89-105-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a lot width of 50 feet in lieu of the required 55 feet as more particularly described in Petitioner's Exhibit 1.

The Petitioner, by Anthony J. Mierzwicki, its President, appeared, testified and was represented by Michael E. Marino, Esquire. Also appearing on behalf of the Petition was Leonard Bohager of McKee and Associates. There were no Protestants.

Testimony indicated that the subject property, known as 344 Upperlanding Road and zoned D.R. 5.5, is an unimproved lot which is part of the Back River Highlands subdivision, Plat Book WPC 4, Folio 64, subdivided in 1911. The Petitioner, through Mr. Bohager, introduced as Petitioner's Exhibit 2 a copy of the subdivision plat. Mr. Bohager testified the neighborhood is made up of 50-foot wide lots with the majority of them being developed with single family homes.

Mr. Mierzwicki testified he plans to build a house which will meet all requirements regarding front, rear and side yard setbacks. There is no adjoining property to either side of the subject lot which can be purchased to meet the lot width requirement as both properties to each side are also only 50 feet wide. The Petitioner testified that if the

requested variance is not granted, unreasonable hardship will result as the subject property will be undevelopable.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 4th day of October, 1988 that the Petition for Zoning Variance to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling, in accordance with Petitioner's Exhibit

1, be and is hereby GRANTED, subject, however, to the following restrictions:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioner shall not request any future front, rear or side yard setbacks for the subject property.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Townson, Maryland 21204
494-3333

J. Robert Haines
Zoning Commissioner

October 4, 1988

Michael E. Marino, Esquire
10 E. Baltimore Street, Suite 1212
Baltimore, Maryland 21202

RE: PETITION FOR ZONING VARIANCE
NE/S Upperlanding Road, 715' NW of Mace Avenue
(344 Upperlanding Road)
15th Election District - 5th Councilmanic District
Tempest Realty, Inc. - Petitioner
Case No. 89-105-A

Dear Mr. Marino:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

cc: People's Counsel

P16

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 11.02.3.C.1. to permit a lot width of 50 ft. in lieu of the required 55 feet.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

1. The single family dwelling proposed (see attached plan) is 28' wide which for side yard set backs in accordance with Baltimore County Code.
2. The subject property and the entire subdivision is residential and without the requested variance the subject property is not capable of being developed thereby creating practical difficulty or hardship with regard to developability.
3. The granting of this variance will not result in injury to the public health, safety or welfare.

I, or we, agree to pay expenses of above Variance advertising, posting, etc. upon filing of this petition, and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s): Tempest Realty, Inc.
(Type or Print Name) By: Anthony J. Mierzwicki, President
(Type or Print Name)
Signature Signature
Address (Type or Print Name)
City and State Signature

Attorney for Petitioner: 700 Fairmount Avenue 823-1500
Michael E. Marino Address Phone No.
(Type or Print Name) Townson, MD. 21204
Signature City and State
10 E. Baltimore St.
Address Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Baltimore, MD. 21202 Michael E. Marino
City and State Name 10 E. Baltimore St.
Address Baltimore, MD. 21202
Attorney's Telephone No.: (301) 685-4400
City and State Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 20th day of July, 1988, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of September, 1988, at 2 o'clock P.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

(over)

ZONING DESCRIPTION
344 Upper Landing Road
Baltimore County, Maryland 21221

Beginning on the northeast side of Upper Landing Road, 715 feet northwest of Mace Avenue, being known and designated as Lot No. 19, as shown on the Plat entitled "Back River Highlands" which plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, folio 64. Said lot containing 11,375 square feet in the 15th Election District and also known as 344 Upper Landing Road.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 15th Date of Posting 9/11/88
Posted for: Variance
Petitioner: Tempest Realty, Inc.
Location of property: NE/S Upperlanding Rd., 715' NW of Mace Ave.
Location of Signs: 344 Upperlanding Rd.
Remarks: Subject Property
Posted by: [Signature] Date of return: 9/14/88
Number of Signs: 1

"DUPLICATE" CERTIFICATE OF PUBLICATION

TOWSON, MD. Sept 12 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md, once in each of 1 successive weeks, the first publication appearing on Sept 8, 1988.

THE JEFFERSONIAN,
Publisher

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property described herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:
Petition for Zoning Variance
Case Number: 89-105-A
NE Side Upperlanding Road,
715' NW of Mace Avenue
(344 Upperlanding Road)
15th Election District
5th Councilmanic District
Petitioner(s):
Tempest Realty, Inc.
Hearing Date: Thursday,
Sept. 28, 1988 at 2:00 p.m.
Variance to permit a lot width of 50 ft. in lieu of the required 55 feet.
In the event that this Petition is granted a building permit may be issued when the City (CPI) say record period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during the period for good cause shown. Such request must be in writing and received in the office for the date of the hearing set above or presented at the hearing.
J. ROBERT HAINES
Zoning Commissioner of Baltimore County
9/19 Sept. 8

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Townson, Maryland 21204
494-3333

J. Robert Haines
Zoning Commissioner

Date: _____

Anthony J. Mierzwicki, President
Tempest Realty, Inc.
700 Fairmount Avenue
Towson, Maryland 21204

Re: Petition for Zoning Variance
CASE NUMBER: 89-105-A
NE Side Upperlanding Road, 715' NW of Mace Avenue
(344 Upperlanding Road)
15th Election District - 5th Councilmanic District
Petitioner(s): Tempest Realty, Inc.
HEARING SCHEDULED THURSDAY, SEPTEMBER 28, 1988 at 2:00 p.m.

Dear Mr. Mierzwicki:

Please be advised that \$85.28 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign and post set(s) to the County Office minutes before

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 059039
DATE 9/29/88 ACCOUNT 801-614-000
AMOUNT \$ 85.28
RECEIVED FROM Tempest Realty, Inc.
FOR Posting 9/28/88 hearing
B 112*****85:88-105-A

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

August 16, 1988

NOTICE OF HEARING

Dennis F. Rasmussen
County Executive

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 89-105-A
N/E Side Upperlanding Road, 715' NW of Mace Avenue
(344 Upperlanding Road)
15th Election District - 5th Councilmanic
Petitioner(s): Tempest Realty, Inc.
HEARING SCHEDULED: THURSDAY, SEPTEMBER 28, 1988 at 2:00 p.m.

Variance to permit a lot width of 50 ft. in lieu of the required 55 feet.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

001 Tempest Realty, Inc.
Michael E. Marino, Esq.
File

PETITION FOR ZONING VARIANCE

344 Upper Landing Road

OWNER: ANTHONY MIERANICKI

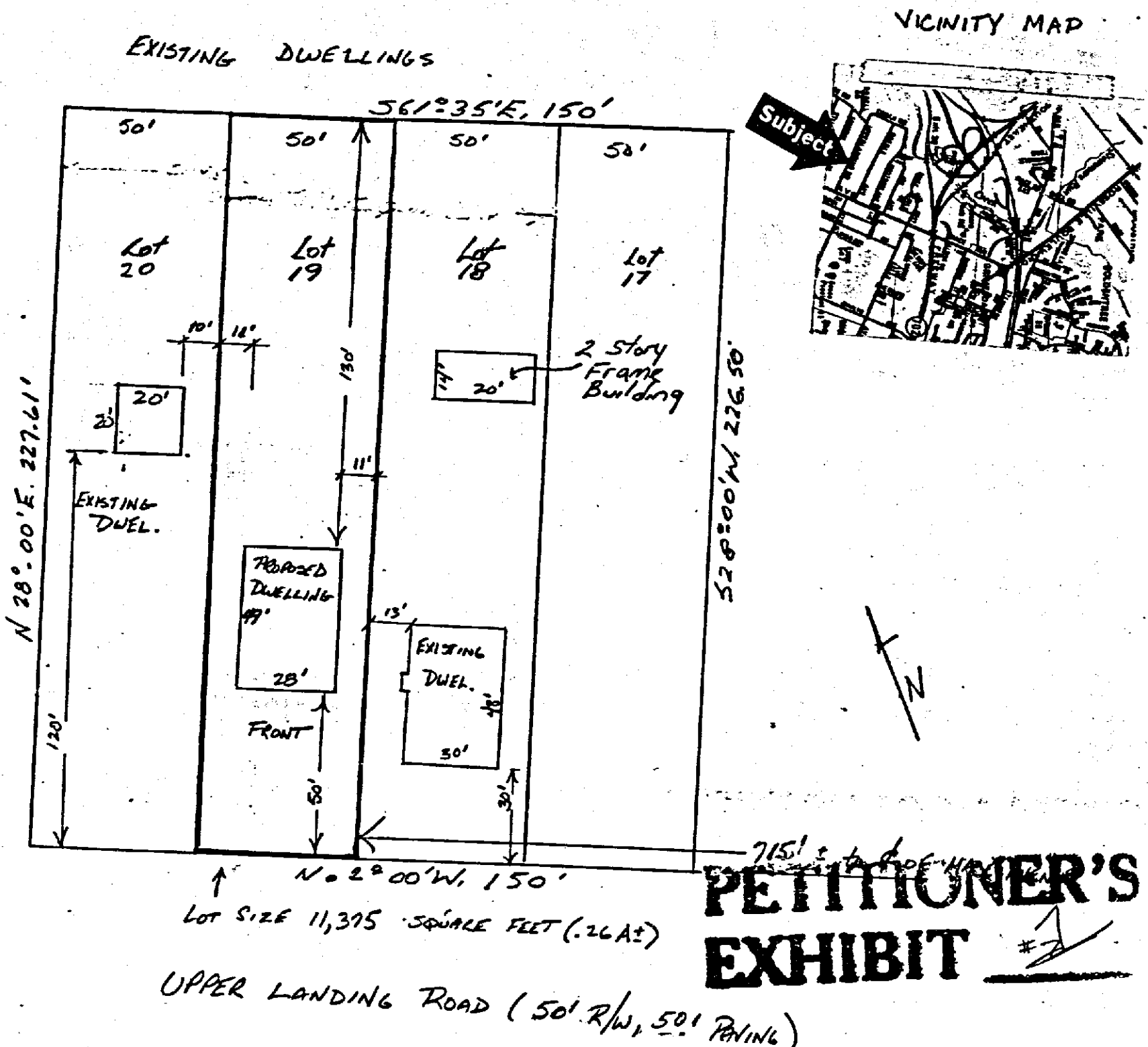
DISTRICT - 15 - ZONED P.R. S-5

SUBDIVISION - "BASE RIVER HIGHLANDS"

LOT 19, "PART BOOK MAP No. 4, FOLIO 64"

EXISTING UTILITIES IN UPPER LANDING RD.

SCALE: 1"=40'



PETITIONER'S
EXHIBIT

89-105-A

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this
20th day of July, 1988.

J. Robert Haines
ZONING COMMISSIONER

Petitioner: Tempest Realty, Inc.
Petitioner's Attorney: Michael E. Marino

Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

Baltimore County
Fire Department
Towson, Maryland 21204-2536
494-4500

Paul H. Reincke
Chief

July 26, 1988

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

Dennis F. Rasmussen
County Executive

Re: Property Owner: Tempest Realty, Inc.

Location: N/E of Upperlanding Road, 715' NW of Mace Avenue

Item No.: 7 Zoning Agenda: Meeting of 7/19/88

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau, and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

- () 1. Fire hydrants for the referenced property are required and shall be located at intervals or _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.
- () 2. A second means of vehicle access is required for the site.
- () 3. The vehicle dead end condition shown at _____
EXCEEDS the maximum allowed by the Fire Department.
- () 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (X) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- () 6. Site plans are approved, as drawn.
- () 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: John F. O'Neill 7-15-88
Planning Group
Special Inspection Division

Noted and
Approved: John F. O'Neill
Fire Prevention Bureau

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

September 20, 1988

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

000

Michael E. Marino, Esquire
Suite 1212
10 East Baltimore Street
Baltimore, Maryland 21202

RE: Item No. 7 - Case No. 89-105-A
Petitioner: Tempest Realty, Inc.
Petition for Zoning Variance

Dear Mr. Marino:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:dt

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
494-3554

August 5, 1988

Dennis F. Rasmussen
County Executive

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 475, 476, 482, 487, 1,2,3,4,8,9 and 10.

Very truly yours,

Stephen E. Weber
Stephen E. Weber, P.E.
Assistant Traffic Engineer

SEW/RF/Lab

RECEIVED
AUG 15 1988

ZONING OFFICE

